IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 222 OF 2005

SHRI DINANATH M.MARDOLKAR,PONDA GOA ....Petitioners

Versus

THE COMMISSIONER OF EXCISE, AND 56 ORS., ...Respondents

Shri M.S. Sonak,Advocate for the Petitioner.

Shri M.S. Joshi, Government Advocate for the State - Respondent.

Coram:- R. M. LODHA &
N. A. BRITTO, JJ.

Date:- 5th September, 2005

P.C.:

Heard Shri Sonak, the learned counsel for the petitioner and perused the Writ Petition, the documents annexed thereto and the Rules called the Goa Re-deployment of Surplus Staff against vacancies of Group C and D Posts (Amendment) Rules, 1995.

The petitioner was rendered surplus in the year 1998 in the Directorate of Agriculture. At that time the petitioner was working as Tractor Assistant in the Directorate of Agriculture. By Order dated 31.12.98 the petitioner was re-deployed as Assistant Excise Guard in the office of Respondent No.1. The petitioner claims that in the seniority list of the Excise Guards he must be given benefit of his seniority that he was having as a Tractor Assistant.

The learned counsel for the petitioner in support of the petitioner's case, heavily relied upon an unreported decision of this Court in the case of Writ Petition No.30/95 - Shaikh Azmatulla v. The Director of

Education and others decided on 28th January, 1999.

Suffice it to say that the Judgment of this Court in Shaikh Azmatulla has no application whatosever in the present case. In that case the Court was concerned with Rule 34 of the Goa, Daman and Diu School Education Rules, 1986. Rule 34 of the Rules of 1986 with which the Division Bench was concerned in Shaikh Azmatulla read thus :-

" S.34. Absorption of surplus emplpyees, etc. (1) Where as a result of - (a) the closure of an aided school of any class/ classes or divisions or discontinuance of any subject in any aided school;
(b) withdrawal of aid from an aided school;
(c) withdrawal of recognition from an aided school;

any student or employee becomes surplus, such student or employee, as the case may be, shall be absorbed, in such aided schools, as the Director of Education may specify:

Provided that the absorption in the aided schools of any employee who has become surplus shall be subject to availability of a vacancy and shall be subject further to the condition that the concerned employee possesses the requisite qualification for the post :

Provided further that where any such surplus employee is absorbed in an aided school, he shall be treated as junior to all the persons of the same category, employed in the aided school on the day immediately preceding date on which he is so absorbed.

(2) .....

(3) Where any surplus employee is absorbed under sub-rule (1) -

(a) the salary and other allowances last drawn by him at the school from which he is become surplus shall be protected. "

The Goa Re-deployment of Surplus Staff against Vacancies of Group'C' and 'D' Posts Rules, 1993 with which we are concerned, are entirely different, particularly clause (4) of Rule 3. Clause (4) of Rule 3 reads thus :-

" (4) A surplus staff sponsored for re-deployment shall not get the benefit of his past seniority in his parent Department. However, the service rendered by such person in the Government, shall be counted towards his pensionary benefits. "

The aforesaid Rule thus make it very clear that the surplus staff sponsored for re-deployment shall not get the benefit of his past seniority in his parent Department. The contention of the learned counsel of the petitioner that this Rule will be applicable only in the case where the re-deployment is given to the surplus employee on the same post and not to the post lower to that, cannot be accepted. There is no question of the petitioner getting the seniority based on his seniority in the post of Tractor Assistant on his re-deployment as Excise Guard under the Re-deployment Rules of 1993.

Writ Petition does not deserve to be admitted. Dismissed in limine.

R. M. LODHA, J.

N. A. BRITTO, J.